

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION



March 29, 2004

Wisconsin Central Ltd.,  
Petitioner,

Vs.

Illinois Department of Transportation,  
Respondent.

T03-0078

Petition of Wisconsin Central Ltd. seeking an order of the Illinois Commerce Commission directing that an additional track and grade crossing be constructed at U.S. 45 Diamond Lake Road (DOT 689 697G) on the Wisconsin Central Ltd. in Lake County, Illinois.

TO ALL PARTIES OF RECORD:

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

Attached is a copy of the Administrative Law Judge's Proposed Order in the above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the Hearing examiner is required under Section 200.820 to issue a Proposed Order to all parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rules of such other times as fixed by the hearing examiner. The times for filing exceptions and replies are fixed at ten days and five days, respectively.

Entered:

*June B. Tate*  
June B. Tate  
Administrative Law Judge  
Review & Examination Program

JBT:rsc  
Railroad Staff: Mr. Vercruysse

**DOCKETED**

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**PROPOSED ORDER**

By the Commission:

On August 11, 2003, Wisconsin Central Ltd. ("the Railroad") filed a verified petition with the Illinois Commerce Commission ("Commission") in the above-captioned matter seeking an order authorizing the construction of an additional track and grade crossing at U.S. 45 Diamond Lake Road (DOT 689 697G) in Lake County, Illinois, naming as Respondent, the Illinois Department of Transportation ("IDOT").

Pursuant to notice as required by law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge of the commission on September 30, 2003 and January 14, 2004 at the Commission's offices in Chicago, Illinois. The Railroad was represented by counsel. Brian Vercruysse of the Railroad Section, Transportation Division entered an appearance. At the conclusion of the hearing on the aforementioned latter date, the record was marked "Heard and Taken."

Thomas R. Klemm, Metra Project Manager and Jack Palach, Signal Design Officer for the Railroad, testified at the hearing. The Railroad proposes the construction of an additional track east of its existing main line track to facilitate Metra's service expansion. Train traffic now consists of ten Metra trains five days of the week and approximately thirty freight trains daily. The number of passenger trains will increase to twenty upon completion of the expansion. Timetable speed for passenger and freight trains is sixty miles per hour, which will remain the same upon completion of the project.

The crossing is now, and will continue to be provided with gates, automatic flashing light signals, bells, sidelights, and constant warning time circuitry. With the additional track, the warning devices will be moved further east at the expense of the Railroad. The east roadway approach for Aptakisic Road will be modified to allow for the additional track, and the proposed crossing surface will consist of concrete panels. The existing rubber surface will be retained. IDOT's traffic signal situated at the U.S. 45 Diamond Lake and Deerpath intersection was in place and functioning sufficiently prior to the filing of this petition. Similarly, the traffic signal system was interconnected with the railroad warning system at the subject grade crossing prior to this filing and functioning properly and sufficiently. The simultaneous minimum preemption time for the U.S. 45 Diamond Lake Road crossing was established in Docket T99-0057. It is and should remain at thirty-three (33) seconds.

Any modifications to the traffic control system are the sole and direct result of the Railroad's pursuit of this improvement project. All costs associated therewith should be borne by the Railroad.

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Wisconsin Central Ltd. is engaged in the transportation of goods for-hire in the State of Illinois and as such, is a rail carrier within the meaning of Chapter 625 ILCS 5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law") as amended;
- (2) the Illinois Department of Transportation exists by virtue of the laws of the State of Illinois;
- (3) the Commission has jurisdiction of the subject matter and parties herein;
- (4) matters contained in the prefatory portion of this Order are adopted as findings of fact;
- (5) the Wisconsin Central Ltd. proposes the construction of an additional track east of its existing main line track at U.S. 45 Diamond Lake Road in Lake County, Illinois;
- (6) the additional double track is part of the Metra North Central Service Expansion Project and is necessary for the efficient operation of freight and Metra passenger trains;
- (7) per the previous Docket T99-0057, the minimum simultaneous preemption time at this crossing consists of and should remain at thirty-three (33) seconds;

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- (8) the Wisconsin Central Ltd. and the Federal Transit Administration shall bear the full cost of the improvements to the U.S. 45 Diamond Lake Road crossing and no funds are requested or are forthcoming from the Grade Crossing Protection Fund of the Motor Fuel Tax Law;
- (9) Chapter 625 ILCS 5/18c-1702 and 5/18c-1704 require each "person" as defined by Section 5/18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that permission be, and it is hereby granted to the Wisconsin Central Ltd. to construct an additional track across the U.S. 45 Diamond Lake Road crossing in Lake County, Illinois, to construct a full depth concrete crossing, retain the existing rubber crossing surface, install constant warning time circuitry to the new track, and to coordinate with the Illinois Department of Transportation the work as noted in the prefatory portion.

IT IS FURTHER ORDERED that the cost of the improvements herein approved be, and the same are hereby to be borne entirely by the Wisconsin Central Ltd. and the Federal Transit Administration.

IT IS FURTHER ORDERED that the Wisconsin Central Ltd. is hereby required and directed to proceed with the project herein approved and in all aspects thereof to conform to the requirements of 92 Illinois Administrative Code ("I.A.C.") 1535.

IT IS FURTHER ORDERED that Wisconsin Central Ltd. shall file Form 1 of 92 I.A.C. 1535 of this Commission showing details of the automatic warning device relocation and circuitry relocation and installation herein required and shall receive approval thereof by X-Resolution before commencing the work of relocation.

IT IS FURTHER ORDERED that the minimum simultaneous preemption time at the U.S. 45 Diamond Lake Road crossing (DOT 689 697G) be, and the same is hereby, retained at thirty-three (33) seconds and that the traffic signal

interconnect work be completed in accordance with the Order(s) from Docket T99-0057.

IT IS FURTHER ORDERED that after the warning system work herein required has been completed, the Railroad shall not take any action which would result in a reduction of the minimum simultaneous preemption time without approval of the Commission.

IT IS FURTHER ORDERED that the Railroad and IDOT shall each post a readily visible notice inside their warning system cabinets at the aforesaid at-grade crossing notifying their personnel not to take any action which would result in a reduction of the minimum railroad preemption time herein required without the approval of the Commission. An actual size copy of such notice shall be submitted by the Railroad and IDOT to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the Wisconsin Central Ltd. shall notify the Director of Processing, Transportation Bureau of the Commission within six months from the date of this order of the progress they have made toward completion of the work herein required.

IT IS FURTHER ORDERED that the work herein required shall be completed within twelve (12) months of the date of this Order.

IT IS FURTHER ORDERED that the Wisconsin Central Ltd. shall within five (5) days of the completion of the work herein, file National Inventory Update Report Forms with the Commission's Director of Processing, Transportation Bureau, as notices of said completion.

IT IS FURTHER ORDERED that any person making a request for extension of time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety

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Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this day of 2004.

Chairman